

May 22, 2006

Mr. David R. Eichenlaub
Assistant Director, Economics
Division of Economics and Finance
Commonwealth of Virginia
State Corporation Commission
1300 East Main St.
Richmond, VA 23218

***Re: The Commission's Sixth Annual Report to the
Commission on Electric Utility Restructuring and the Governor***

Dear Mr. Eichenlaub:

Constellation NewEnergy, Inc. ("Constellation NewEnergy") appreciates the opportunity to offer ideas to assist the Commission in developing effective competition in the Commonwealth. As you are aware Constellation NewEnergy is a licensed Competitive Service Provider in the Commonwealth.

In addition, Constellation NewEnergy is licensed or certified to act as an alternative retail electric supplier to serve customers located in more than 20 states and provinces throughout the United States and Canada. Constellation NewEnergy has over 15,500 MW of load under contract with over 10,000 retail customers. In the PJM region, Constellation NewEnergy serves approximately 1,200 MW of industrial and commercial load. Our customers include universities, manufacturers, schools, hospitals, hotels, retail stores, and office buildings.

The Status of Competition in the Commonwealth

Retail competition continues to evade the Commonwealth, and will likely continue to do so during the period when utility rates are capped below market prices.

While the promise of competition is in the development of products and services that

meet customer needs, markets develop first based on price competition. Given the persistence of rate caps in the Commonwealth, it is not surprising to find a lack of interested competitive suppliers providing customers with competitive offerings. Until such time as those rate caps expire, this situation is unlikely to change. In the meantime, we urge the Commonwealth to begin an examination of the utilities' rate designs to ensure that distribution and transmission service costs are properly allocated and do not in any way subsidize generation service. Transparency of costs and ability to compare rates with prices will be a critical element in the development of competitive markets.

As we noted in our comments in the Commission's Default Service investigation, the Commission and the Commonwealth would be well served by the initiation of a Working Group to explore the design of default service after the expiration of rate caps in the Commonwealth.¹ Lessons learned in the PJM retail markets, as well as other U.S. markets, could prove very useful in shaping the future of Virginia's retail electric market. The Commission Staff has a long and successful history of effectively facilitating Working Groups and we urge the Commission to initiate a Default Service Working Group that would report to this Commission, the Commission on Electric Utility Restructuring ("EURC") and the Governor.

1. The Status of the Development of Regional Competitive Markets

a. Wholesale

An important step in Virginia's transition to competitive markets occurred on May 1, 2005 when Dominion Virginia Power became a member of PJM. The integration

¹ See Comments of Constellation NewEnergy, Inc., Case No. PUE-2006-00001, March 24, 2006.

was by all accounts successful. While membership in PJM in and of itself is not sufficient to develop retail choice, we note that success in retail markets is more immediate and comprehensive where there is an organized and vibrant wholesale market. PJM is by no means perfect but in our experience is among the best of the organized markets. Members of PJM benefit from the improved system reliability, increase in available resources during peak periods and access to economic power supplies. In addition, PJM continues to address issues of importance to the market participants via the stakeholder process. We are encouraged by the development and growth of the Organization of PJM States (“OPSI”) as a mechanism for the Commission (and other Commissions) to voice their views to PJM and the stakeholders. OPSI provides the Commission a means to work with other Commissions within PJM on issues of mutual interest. This involves the Commission early on in the stakeholder process allowing for valuable input and comment as the stakeholders work toward consensus.

b. Retail

Within the PJM footprint, retail markets continue to develop and PJM continues to develop new products, such as PJM’s integration of load response into their ancillary service markets. While the expiration of residential rate caps that froze rates to their 1993 level in the BGE territory has recently generated significant political interest, commercial and industrial customers have displayed a willingness to participate in the competitive market and that desire has led to the development of a competitive market for those rate classes.

Within the classic PJM region, the number of commercial and industrial customers choosing alternate energy suppliers continues to demonstrate a high degree of

switching activity. In Maryland, the switching statistics for commercial and industrial customers show that 58.8% of the commercial and industrial customers have switched to competitive suppliers.² The March 2006 switching rates for commercial and industrial customers in other classic PJM regions were as follows also demonstrate a high degree of switching among commercial and industrial customers. In the Duquesne Light Company service territory in Pennsylvania, 59.2% of industrial and commercial customers have switched to a competitive electric supplier.³ In the Pepco service territory in the District of Columbia, 44.6% of industrial and commercial customers have switched to a competitive electric supplier.⁴ While switching statistics are not the only metric on which to judge the success or development of retail markets, they are one important factor.

Another indicator of retail market development in the commercial and industrial sector is the number of retail competitors vying for the commercial and industrial business, putting downward pressure on prices and creating new products and services. In Maryland, there are nineteen (19) electric suppliers serving large commercial and industrial customers.⁵ There are also a significant number of retail competitors participating in the DC and Delaware markets as well as in the market behind the one utility in Pennsylvania whose rate caps have expired.⁶

Clearly, the high degree of switching activity demonstrates that customers have shown the willingness to participate in the marketplace and take electric service from

² See <http://www.psc.state.md.us/psc/Electric/electricRestructuring.htm>.

³ See <http://www.oca.state.pa.us/cinfo/instat.htm>.

⁴ See <http://www.dcpsc.org/customerchoice/whatis/electric/electric.shtm>.

⁵ See *infra* Footnote 2.

⁶ See *infra* Footnotes 2, 3, and 4. See also <http://www.state.de.us/delpsc/electric/elecsupplierinfo.com>.

companies that provide products and services that best meet their needs. In turn, the participation by a large number of suppliers in the marketplace demonstrates that if the market rules are fairly and properly constructed, competitive retail electric suppliers will invest in the market and vie for the opportunity to provide service to customers.

Thank you for the opportunity to submit comments to the Commission as it prepares its report to the EURC and the Governor. Please do not hesitate to contact me should you have any questions or concerns.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Martha Duggan', with a stylized, flowing script.

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